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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,276	10/25/2005	Harry Kiemele	502901-428PUS	3051
27799	7590	08/31/2010	EXAMINER	
COHEN, PONTANI, LIEBERMAN & PAVANE LLP 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176			EVANISKO, LESLIE J	
			ART UNIT	PAPER NUMBER
			2854	
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			08/31/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/554,276	KIEMELE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leslie J. Evanisko	2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 July 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) 2,4-7,9 and 11-15 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,8,10 and 16-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02/09/09 & 10/25/05 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 9, 2010 has been entered.

### **Election/Restrictions**

2. Claims 2, 4-7, 9, and 11-15 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 28, 2008.

### **Claim Objections**

3. Claims 1, 3, and 16-20 are objected to because of the following informalities:  
With respect to claim 1, it is suggested that the term --the-- be inserted before "printing medium" in line 4 since the printing medium was previously recited in line 3. Note that a similar problem occurs with claim 16, line 6.

With respect to claim 18, it appears that this claim is a double recitation of subject matter in claim 1.

With respect to claim 19, the term “the rest state transport” in lines 1-2 has no proper antecedent basis.

With respect to claim 20, it appears that this claim is a double recitation of subject matter in claim 16.

Appropriate correction and/or clarification is required.

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 3, 8, 10, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al. (JP 11-320989 A).

With respect to claims 1 and 18, Sakai et al. teach a printer comprising a supply of printing medium 1; a medium transport device (i.e., the drive for platen roller 3) arranged such that the printing medium can be conveyed in an output transport direction; a control unit to control the medium transport device; and where the control unit is arranged such that the control unit activates the medium transport device in such a way that the medium transport device carries out a rest state (i.e., standby time) transport at periodic intervals, even without the presence of a print job, wherein during the rest state transport, the medium transport device transports the printing medium in and/or counter to the output transport direction. Particular attention is invited to Figures 1-4, the English language abstract, and the previously attached partial English language translation of Sakai et al. Note that Sakai et al. teach the rest state transport including the transport of the printing medium in and counter to the output transport direction occurs during a waiting or standby period between prints.

Note that Sakai et al. teaches carrying out a rest state transport at periodic intervals, but fail to specifically teach the transport device carries out a rest state transport at the start of an activation of the printer caused by receipt of a print job before processing the print job. However, one of ordinary skill in the art would recognize the desirability of performing this rest state transport at any desired time between printing operations, such as at the start of activation of a printer which is about to process (i.e., print) a received print job, in order to insure there is no undesired sticking of the print medium before performing a print operation so as to insure proper

printing upon the print medium. One of ordinary skill in the art would recognize that performing this transport operation immediately prior to a printing operation would be desirable to insure the printing medium is not stuck to the thermal head or platen and can be reliably conveyed during the print operation. Therefore, it would have been obvious to one of ordinary skill in the art to provide the rest state transport of Sakai et al. to also occur at the start of activation of the printer caused by receipt of a print job to insure that there is no inadvertent sticking of the print material to the drive roller caused by long wait times between activation of the printer for various print jobs.

With respect to claim 3, Sakai et al. teach the control unit is arranged to activate the medium transport device during the rest state transport in such a way that the printing medium is initially conveyed from an initial position counter to the output transport direction (i.e., backfed to resting position) and is then transported back into the initial position in the output transport direction. See for example, the description of the embodiments of Figs. 2-4 and particularly paragraphs [0014] and [0026] which teach backfeeding the label and then feeding a label forward again such that the print start position at the time of printing of the next time at the time of returning from a waiting state does not shift. Note in particular paragraph [0014] of the partial translation indicates that an embodiment including reversing motion first and then rotating normally is also possible.

With respect to claims 8 and 19, Sakai et al. teach a method of controlling a printer comprising transporting a printing medium 1 with a medium transport device, in and opposite to an output transport direction at periodic intervals. Sakai fails to teach transporting the printing medium at the start of an activation of the printer

caused by receipt of a print job before processing the print job. However, one of ordinary skill in the art would recognize the desirability of performing this rest state transport at any desired time between printing operations, such as at the start of activation of a printer which is about to process (i.e., print) a received print job, in order to insure there is no undesired sticking of the print medium before performing a print operation so as to insure proper printing upon the print medium. One of ordinary skill in the art would recognize that performing this transport operation immediately prior to a printing operation would be desirable to insure the printing medium is not stuck to the thermal head or platen and can be reliably conveyed during the print operation. Therefore, it would have been obvious to one of ordinary skill in the art to provide the transporting of the printing medium of Sakai et al. to also occur at the start of activation of the printer caused by receipt of a print job before processing the print job to insure that there is no inadvertent sticking of the print material to the drive roller caused by long wait times between activation of the printer for various print jobs.

See the previous comments with respect to claim 1. Although the printer of Sakai et al. does not specifically state that it may be used for printing out a report for a tachograph in a commercial vehicle, this language in the preamble is merely a functional recitation of an intended use and since the body of the claim fails to further limit the printer structure to that particular environment, it is the Examiner's position that the printer of Sakai et al. is capable of being used to print out a report for a tachograph as recited and thereby meets the claim language as recited. Particular attention is invited to MPEP 2111.02.

With respect to claim 10, Sakai et al. teach the method includes during the rest state transport, the printing material is initially conveyed from an initial position counter to the output transport direction and is then transported back into the initial position in the output transport direction in paragraph [0014].

7. Claims 16-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burkart (US 6,437,815 B1) in view of Sakai et al. (JP 11-320989).

With respect to claims 16 and 20, Burkart teaches a combination of a printer 18 integrated in a tachograph 3 for printing out a report relating to data recorded by the tachograph in a commercial vehicle, the tachograph including a higher order controller, the printer comprising a supply of printing medium 32 and a medium transport device 47 arranged such that the printing medium can be conveyed in an output transport direction, and a control unit 51, 49 arranged to control the medium transport device.

Burkart is silent with respect to the details of the control unit and whether it is arranged to activate the medium transport to carry out a rest state transport to transport the medium in and opposite to the output transport direction as particularly recited. However note that Sakai et al. teach it is well known in a printer subjected to harsh environmental conditions (such as high or low temp environments) to provide a control unit to control the medium transport device; and where the control unit is arranged such that the control unit activates the medium transport device in such a way that the medium transport device carries out a rest state (i.e., standby time) transport at periodic intervals, wherein during the rest state transport, the medium transport device transports the printing medium in and/or counter to the output transport direction.

Particular attention is invited to Figures 1-4, the English language abstract, and the previously attached partial English language translation of Sakai et al. Note that Sakai et al. teach the rest state transport including the transport of the printing medium in and counter to the output transport direction occurs during a waiting or standby period between prints.

Note that although Sakai et al. fail to specifically teach the transport device carries out a rest state transport at the start of an activation of the printer caused by receipt of a print job before processing the print job, it is the Examiner's position that one of ordinary skill in the art would recognize the desirability of performing this rest state transport at any desired time between printing operations, such as at the start of activation of a printer which is about to process (i.e., print) a received print job, in order to insure there is no undesired sticking of the print medium before performing a print operation so as to insure proper printing upon the print medium. One of ordinary skill in the art would recognize that performing this transport operation immediately prior to a printing operation would be desirable to insure the printing medium is not stuck to the thermal head or platen and can be reliably conveyed during the print operation. Therefore, it would have been obvious to one of ordinary skill in the art to provide the rest state transport of Sakai et al. to also occur at the start of activation of the printer caused by receipt of a print job to insure that there is no inadvertent sticking of the print material to the drive roller caused by long wait times between activation of the printer for various print jobs.

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the control unit of the printer of Burkart to activate the medium transport

device to carry out a rest state transport as recited to provide more accurate printing in a tachograph in a commercial vehicle, which is subjected to harsh environmental conditions.

With respect to claim 17, Sakai et al. teach the control unit is arranged to activate the medium transport device during the rest state transport in such a way that the printing medium is initially conveyed from an initial position counter to the output transport direction (i.e., backfed to resting position) and is then transported back into the initial position in the output transport direction. See for example, the description of the embodiments of Figs. 2-4 and particularly paragraphs [0014] and [0026] which teach backfeeding the label and then feeding a label forward again such that the print start position at the time of printing of the next time at the time of returning from a waiting state does not shift. Note in particular paragraph [0014] of the partial translation indicates that an embodiment including reversing motion first and then rotating normally is also possible.

### **Response to Arguments**

8. Applicant's arguments with respect to claims 1, 3, 8, 10, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Leslie J. Evanisko** whose telephone number is (571) 272-2161. The examiner can normally be reached on T-F 8:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/ Leslie J. Evanisko /*  
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lje  
August 28, 2010